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FILED
HARRISBURG, PA

JUN 21 2000
MARY E. D'ANDREA, CLERK
Per Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GAIL GALLOWAY

Plaintiff

v.

PENNSYLVANIA BOARD OF
PROBATION AND PAROLE, *et al.*,

Defendants

No. 1:00-CV-00649

Judge Rambo

Magistrate Judge Smyser

MOTION TO DISMISS FILED ON BEHALF OF DEFENDANTS
PENNSYLVANIA BOARD OF PROBATION AND PAROLE,
JOSEPH SMITH, DANIEL ROBERTS, GEORGE JOHNSON,
ARTHUR THOMAS, K. SCOTT ROY, THOMAS RIDGE,
WILLIAM WARD, SHARON BURKS, SETH MENDELSON,
FRED JACOBS, NEIL MECHLING AND JAMES MORGAN

Defendants Pennsylvania Board of Probation And Parole, Joseph Smith, Daniel Roberts, George Johnson, Arthur Thomas, K. Scott Roy, Thomas Ridge, William Ward, Sharon Burks, Seth Mendelsohn, Fred Jacobs, Neil Mechling and James Morgan, by their attorneys, move the Court to dismiss them from this action on grounds that:

1. The Board and the natural person defendants sued in their official capacity are immune from damages by reason of the Eleventh Amendment to the U.S. Constitution.

2. The claims against Daniel Roberts, George Johnson, K. Scott Roy, Thomas Ridge, William Ward, Sharon Burks, Neil Mechling and James Morgan, although asserting conspiratorial conduct are really claims based on their supervisory responsibility. These defendants may not be held liable for the alleged conduct of others.
3. The claims against Arthur Thomas and Seth Mendelsohn, although couched as claims of conspiracy are in reality claims regarding their conduct as attorneys representing the Board in judicial proceedings. Their conduct did not violate any of plaintiff's constitutional rights. Moreover, they were functioning in the capacity of prosecutors and enjoy immunity for their actions.
4. Joseph Smith is immune from damages for his testimony given under oath at plaintiff's revocation hearing.
5. Fred Jacobs was conducting plaintiff's parole revocation hearing as a hearing examiner for the Board of Probation and Parole. Therefore he enjoys quasi-judicial immunity for any decisions he rendered in that capacity.
6. The search of plaintiff's property did not violate plaintiff's Fourth Amendment rights.
7. Plaintiff has not obtained a favorable decision concerning his challenge to the parole revocation proceedings. Therefore plaintiff's claim under § 1983 is not cognizable.
8. The Prison Litigation Reform Act of 1995, bars claims regarding conditions of confinement until such administrative remedies as are available have been exhausted. Plaintiff does not allege he exhausted those remedies and his claims concerning Sharon Burks, Neil Mechling and James Morgan must be dismissed.

Wherefore, the Court should dismiss the Pennsylvania Board of Probation and Parole, Joseph Smith, Daniel Roberts, George Johnson, Arthur Thomas, K. Scott Roy, Thomas Ridge, William Ward, Sharon Burks, Seth Mendelsohn, Fred Jacobs, Neil Mechling and James Morgan as defendants.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

BY: *Francis R. Filipi*
FRANCIS R. FILIPI
Senior Deputy Attorney General
Attorney ID# 18630

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

Counsel for Defendants Pennsylvania
Board of Probation And Parole, Joseph
Smith, Daniel Roberts, George Johnson,
Arthur Thomas, K. Scott Roy, Thomas
Ridge, William Ward, Sharon Burks, Seth
Mendelsohn, Fred Jacobs, Neil Mechling
and James Morgan

OFFICE OF ATTORNEY GENERAL
Litigation Section
15th Floor, Strawberry Square
Harrisburg PA 17120
E-Mail: ffilipi@attorneygeneral.gov
Direct Dial: (717) 787-3874
FAX: (717) 772-4526

DATE: June 21, 2000

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FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GAIL GALLOWAY

Plaintiff

v.

PENNSYLVANIA BOARD OF
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Defendants

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No. 1:00-CV-00649

Judge Rambo

Magistrate Judge Smyser

CERTIFICATE OF NONCONCURRENCE

I, FRANCIS R. FILIPI, hereby certify that concurrence in the Motion to Dismiss Filed on Behalf of Defendants Pennsylvania Board of Probation and Parole, Joseph Smith, Daniel Roberts, George Johnson, Arthur Thomas, K. Scott Roy, Thomas Ridge, William Ward, Sharon Burks, Seth Mendelsohn, Fred Jacobs, Neil Mechling and James Morgan was sought from plaintiff but that he would not concur. Counsel for Hon. William Caldwell and for District Attorney Robert B. Stewart, III, were contacted and both concur in said motion. Lastly, I attempted to contact Mr. Charles B. Giornesto for his concurrence or nonconcurrence in said motion but have been unsuccessful.


FRANCIS R. FILIPI

DATED: June 21, 2000

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Defendants

No. 1:00-CV-00649

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CERTIFICATE OF SERVICE

I, FRANCIS R. FILIPI, Senior Deputy Attorney General, hereby certify that on this date I caused to be served copies of the foregoing Motion to Dismiss Filed on Behalf of Defendants Pennsylvania Board of Probation and Parole, Joseph Smith, Daniel Roberts, George Johnson, Arthur Thomas, K. Scott Roy, Thomas Ridge, William Ward, Sharon Burks, Seth Mendelsohn, Fred Jacobs, Neil Mechling and James Morgan, by depositing a copy in the United States Mail, postage prepaid, first class, in Harrisburg, PA, addressed to each of the following:

Gail Galloway
R.D. #1, Box 30
Petersburg, PA 16669

Plaintiff

Peter McManamon, Esq.
200 Penn Street
P.O. Box 383
Huntingdon PA 16652

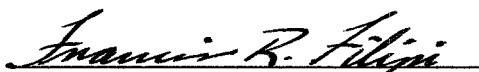
Counsel for District Attorney Robert B. Stewart, III

Anne K. Fiorenza, Esq.
Assistant U.S. Attorney
U.S. Attorney's Office
228 Walnut Street, Suite 217
Harrisburg, PA 17108

Counsel for Hon. William Caldwell

Charles B. Giornesto
11393 Raystown Rd.
Saxton, PA 16678-8054

Defendant


FRANCIS R. FILIPI
Senior Deputy Attorney General

DATED: June 21, 2000